Supreme Court, U. S.
FILED
AUG 4 1980
MICHAEL RODAK, JR., CLERK

No. 80-164

IN THE

Supreme Court of the United States

October Term 1980

HOLIDAY AIRLINES CORPORATION, a California corporation (formerly doing business as HOLIDAY RECREATIONAL RESOURCES and HOLIDAY RESOURCES CORP.),

Bankrupt.

CURTIS B. DANNING, as Trustee in Bankruptcy of Holiday Airlines Corporation,

Petitioner,

vs.

PACIFIC PROPELLER, INC., a Washington corporation,

Respondent.

On Petition for a Writ of Certiorari to the United St tes Court of Appeals for the Ninth Circuit.

PETITION FOR CERTIORARI.

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QUESTIONS PRESENTED.

In an attempt to perfect a mechanic's lien on an aircraft propeller, respondent disregarded state statutory procedure and instead filed a Notice of Claim of Lien-Aircraft with the Federal Aviation Administration in Oklahoma City, Oklahoma. The Notice, filed pursuant to 49 U.S.C. § 1403(a)(2), did not specifically describe the propeller, but

rather described the aircraft on which the propeller was installed. The Court of Appeals, affirming the District Court which, in turn, had affirmed the Bankruptcy Judge, held that respondent had perfected its lien on the propeller. The questions presented are:

1. Do the provisions in the Federal Aviation Act of 1958 for recordation of aircraft ownership apply to non-consensual artisans' liens, thus excusing respondent from complying with state recording procedure?

2. Is the requirement of 49 U.S.C. § 1403(a)(2), 14 C.F.R. § 49.41(a) and 14 C.F.R. § 49.43(a) that an aircraft propeller against which a lien is claimed be "specifically identified" satisfied by an instrument that identifies only the aircraft on which the propeller has been installed?

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Petitioner, Curtis B. Danning, Trustee in Bankruptcy of Holiday Airlines Corporation, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on May 28, 1980.

OPINIONS BELOW.

The opinions of the bankruptcy judge [App. 1] and of the United States District Court for the Central District of California [App. 30] were not reported. The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 620 F.2d 731 (9th Cir. 1980) [App. 37].

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The judgment of the United States Court of Appeals for the Ninth Circuit was entered on May 28, 1980. An Order Denying Petition for Rehearing was entered on June 24, 1980 [App. 44]. On July 9, 1980, the Court of Appeals stayed its mandate pending the filing, consideration and disposition by this Court of this petition [App. 49].

STATUTES AND REGULATIONS INVOLVED.

The pertinent portions of the Federal Aviation Act of 1958 [49 U.S.C. §§ 1301(6), 1301(12), 1301(20), 1301 (33), 1301(37), 1403(a) and 1403(f)], of the regulations promulgated by the Secretary of Transportation [49 C.F.R. §§ 49.41, 49.43, 49.51 and 49.53] and of the Revised Code of Washington [R.C.W. §§ 60.08.010 and 60.08.020] are set forth in the Appendix at pp. 51-56.

STATEMENT OF THE CASE.

Respondent is an approved aircraft repair station located in the State of Washington. In April and May of 1974, Holiday Airlines Corporation ("Holiday"), an intrastate air carrier in California, shipped a propeller assembly, con-

sisting of a hub and four blades, and a regulator to respondent for overhaul and repair.[1] Respondent performed the requested services and on January 10, 1975 returned the propeller assembly and regulator to Holiday in California. The propeller assembly and regulator were installed on a Lockheed Electra aircraft leased by Holiday and then located in California.

Section 60.08.010 of the Revised Code of Washington gave respondent a possessory artisan's lien on the propeller assembly and regulator. Section 60.08.020 of the Revised Code of Washington further provided a method by which respondent could have perfected its artisan's lien against third parties upon redelivery of the propeller assembly and regulator to Holiday. Specifically, that section gave respondent sixty (60) days within which to file a lien notice in the office of the auditor of the county in which the chattel was kept. The section explicitly required the lien notice to state, among other things, "a description of the chattel upon which the claimant has performed labor or furnished materials . . . ."

Respondent did not file a lien notice in accordance with state procedure, but rather, within the time permitted by R.C.W. § 60.08.020 filed a Notice of Claim of Lien-Aircraft [App. 55] with the Federal Aviation Administration in Oklahoma City, Oklahoma.[2] The Notice of Claim of Lien-

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[1]The propeller assembly was specifically identified as a hub bearing Serial No. P1081/HC421 and 4 blades bearing Serial Nos. B1427, B911, B8399 and B1534. The regulator was identified as bearing Serial No. R-248.

[2]The Notice of Claim of Lien-Aircraft identified Petroleum Investment Services, Inc. of Lakewood, Colorado, as the owner of the Lockheed Electra aircraft. Petroleum Investment Services, Inc. had leased that aircraft to Holiday. Although respondent was entitled to assert a lien only on the propeller assembly and regulator on which it had performed services, although respondent had delivered the propeller assembly and regulator to Holiday in California and although the propeller assembly and regulator had been installed on the Lockheed Electra aircraft in California, respondent's Notice of Claim of Lien alleged that respondent had performed services on "component parts" of an aircraft, which "component parts" were located in Lakewood, Colorado, and asserted a lien over the entire Lockheed Electra aircraft.

Aircraft did not comply with either Washington law [no description of the chattel on which respondent performed services; not filed in accordance with state procedure] or with the Federal Aviation Act [no specification of the make, model, horsepower rating, manufacturer's serial number or any other information about or identification of the propeller assembly and regulator on which respondent had performed services]. Rather, it identified the aircraft on which the propeller assembly and regulator had been installed and erroneously stated that those parts were located in Lakewood, Colorado rather than in California.

Holiday did not pay respondent. On February 14, 1975, Holiday filed a petition for an arrangement under Chapter XI of the Bankruptcy Act in the United States District Court for the Central District of California. On April 1, 1975, Holiday was adjudicated a bankrupt.

Petitioner, as the duly appointed, qualified, and acting trustee in bankruptcy for Holiday, commenced an adversary proceeding before the bankruptcy judge against respondent and others to determine the validity of the liens that had been asserted against the Lockheed Electra aircraft. Respondent cross-claimed for leave to foreclose its artisan's lien.

The bankruptcy judge held that by enacting the recordation provisions of the Federal Aviation Act of 1958, Congress intended to and did preempt all state statutes relating to recordation of nonconsensual as well as consensual liens on aircraft. The bankruptcy judge further held that despite respondent's failure to comply with either the Washington procedure for the perfection of an artisan's lien or the Federal Aviation Act recordation requirements as set forth in 49 U.S.C. § 1403(a)(2) and 14 C.F.R. § 49.43(a), respon-

dent had perfected its artisan's lien as against petitioner.[3] The district court affirmed the bankruptcy judge by adopting the bankruptcy judge's Opinion. The court of appeals affirmed without substantial additional discussion of the issues raised by this petition.

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[3]Petitioner was asserting the rights of an ideal lien creditor under Section 70c of the Bankruptcy Act, 11 U.S.C. § 110(c).

REASONS FOR ALLOWANCE OF THE WRIT.

The decision below should be reviewed because (1) it erroneously interprets the Federal Aviation Act of 1958 and the regulations promulgated thereunder in a manner which, if left standing, will cause chaos in the aircraft financing industry, a result assiduously sought to be avoided by Congress when it enacted the 1959 Amendments to the Federal Aviation Act of 1958; (2) it erroneously attributes to Congress an intent to preempt state statutes dealing with the recordation of nonconsensual aircraft liens; and (3) it is in conflict with decisions of other federal courts on the same issues, none of which have been settled by this Court.

A. By Enacting Section 503 of the Federal Aviation Act of 1958 [49 U.S.C. § 1403], Congress Did Not Intend to Preempt State Laws Dealing With Recordation of Nonconsensual Liens on Aircraft.

In *Malone v. White Motor Co.*, 435 U.S. 497, 504, 98 S.Ct. 1185, 1190, 55 L.Ed.2d 443 (1978), this Court said:

> "Often Congress does not clearly state in its legislation whether it intends to preempt state laws; and in such instances, the courts normally sustain local regulation of the same subject matter unless it conflicts with federal law or would frustrate the federal scheme, or unless the courts discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the States."

In its holding in this case that the recordation provisions of the Federal Aviation Act preempted state laws dealing with recordation of *nonconsensual* liens, the court of appeals did not analyze "the federal shceme" underlying the Federal Aviation Act, did not concern itself with "the totality of the circumstances" surrounding the recordation provisions of the Act and disregarded the ambiguity that by necessity

would be created in those provisions should they be held applicable to nonconsensual liens. In other words, the court of appeals never attempted to ascertain whether Congress sought to occupy the *entire* field of recordation of interests in aircraft *or only a discrete portion of that field*. Of course, as this Court held in *Retail Clerks International Ass'n, Local 1625 v. Schermerhorn*, 375 U.S. 96, 103, 84 S.Ct. 219, 223, 11 L.Ed.2d 179 (1963), "[t]he purpose of Congress is the ultimate touchstone." Here, that touchstone has been ignored.

Nowhere does the Federal Aviation Act provide, either explicitly or by implication, that nonconsensual liens must be recorded under the Act in order to be enforceable. The most reasonable interpretation is that the omission to so provide must have been intentional. The reasons for this are twofold.

First, the utter lack of any mention of nonconsensual liens anywhere in the Act gives rise to a presumption that Congress intended to exclude nonconsensual liens from the operation of the Act. If, in hindsight, it appears that Congress should not have so acted, it is not the prerogative of the courts to cure an intentional congressional omission. Judicial construction cannot be used to fill such a void, for as this Court said in *Ebert v. Poston*, 266 U.S. 548, 554, 45 S.Ct. 188, 190, 69 L.Ed. 435 (1925):

> "The judicial function to be exercised in construing a statute is limited to ascertaining the intention of the Legislature. A casus omissus does not justify judicial legislation."

Second, the language of the Act unequivocally indicates that Congress did not intend to make nonconsensual liens subject to the recordation provisions of the Act and, therefore, did not intend to preempt state statutes relating to the recording of nonconsensual liens. The Act speaks in terms

of "conveyances" and "instruments." It is at once clear that a nonconsensual lien, arising by operation of law, is not a "conveyance" as that term is defined in 49 U.S.C. § 1301(20). It is equally as clear that a nonconsensual lien cannot be classified as an "instrument executed for security purposes" as that phrase is used in 49 U.S.C. § 1403(a)(2). Not only is a nonconsensual lien not an "instrument", but also there appears to be something incongruous in the use of the word "executed" in connection with the creation of a nonconsensual lien. Similarly, the provision of section 1403(c), that conveyances and instruments not recorded under the Act are invalid except as to the person by whom they were "made or given", is meaningless in connection with nonconsensual liens, which are neither "made" nor "given."

Although the court of appeals did not analyze the applicability of the Act to nonconsensual liens, at one point in its opinion it did recognize the confusion that is caused by forcing nonconsensual liens into the procrustean bed of the Act:

> "It is not clear how liens that arise by operation of law, and not by the agreement of the parties (and thus without an 'instrument' that is 'delivered', fit within the scope of § 1406, if indeed they fit at all. The artisans' lien in this case was filed on an F.A.A. form used for the purpose and was not "delivered" by one party to another party, but was completed by the lien holder and filed with the F.A.A." [App. 43].

Despite all of the foregoing, the court of appeals concluded at page 6 of its opinion [App. 42-43]:

> "We cannot accept an argument that artisans' liens are not within the ambit of the Act. Section 1403 refers to any 'instrument executed for security purposes' and to any 'other instrument [that] affects the title to, or

> any interest in, any aircraft engines, propellers, or appliances. . . .' Rules promulgated in 14 C.F.R. 49.41 and 19.51 [sic], refer to 'Any lease, a notice of tax lien, or other lien . . .' "[4]

Obviously, the court of appeals based its finding that Congress intended to include nonconsensual liens under the recordation provisions of the Act on the phrase "a notice of tax lien or other lien" appearing in 14 C.F.R. § 49.41(a), a regulation dealing with the recordability of interests in specific aircraft engines and propellers under 49 U.S.C. § 1403(a)(2). Significantly, however, section 1403(a)(2) does not provide for the recordation of "a notice of tax lien or other lien." Rather, it deals only with leases and instruments executed for security purposes. The language of the regulation is substantially broader than the statute under which it was promulgated. While regulations may have the force and effect of statutes, they cannot require more than the statute under which they were promulgated. *Manhattan General Equipment Co. v. Commissioner of Internal Revenue*, 297 U.S. 129, 134, 56 S.Ct. 397, 400, 80 L.Ed. 528 (1936). At best, 14 C.F.R. § 49.41(a) is not indicative of any intent by Congress to regulate recordation of nonconsensual liens on aircraft. At worst, it is an unenforceable regulation. In either case, it was incorrectly relied upon by the court of appeals.

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[4]In fact, section 1403(a)(2) refers to "*any mortgage, equipment trust, contract of conditional sale, or other* instrument executed for security purposes. . . ." [Emphasis added.] The court of appeals' failure to consider the emphasized language gives a totally different and incorrect meaning to section 1403(a)(2), especially when read with the balance of the section. Further, the reference to 14 C.F.R. § 49.51 [erroneously cited as 14 C.F.R. § 19.51] is inapposite. Section 49.51 of the regulations deals with recordation of interests in aircraft under 49 U.S.C. § 1403(a)(3), a section that has no relationship to respondent's claim of lien on a specifically identified propeller assembly.

The intent of Congress that can be gleaned from the Act and its legislative history is the intent "to substitute for a multiplicity of state registration and recording systems a single nationwide system for registering instruments of title and recording certain security documents on property which is highly mobile and moves quickly and frequently between states." *Feldman v. Philadelphia Nat'l Bank*, 408 F.Supp. 24, 37 (E.D.Pa. 1976). "Congress did not intend to comprehend within the system mechanics' liens or other claims which do not arise from an instrument or are not consensually created." Sigman, *The Wild Blue Yonder: Interests in Aircraft Under Our Federal System*, 46 So.Cal.L.Rev. 316, 320-322 (1973).

B. The Opinion of the Court of Appeals Disregards Statutory Language, Legislative Intent, Case Law and Respected Authority and Creates Chaos in the Aircraft Financing Industry.

Respondent's Notice of Claim of Lien [App. 55] contains a hodge-podge of statements and does not clearly indicate whether it is to be recorded under 49 U.S.C. § 1403(a)(1), (2) or (3). By process of elimination, however, it appears that respondent intended to record the Notice of Claim of Lien under section 1403(a)(2).[5] That section relates to in-

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[5]Respondent cannot and never has contended that the Notice of Claim of Lien is a "conveyance" as that term is used in 49 U.S.C. § 1301(20) so as to be recordable under section 1403(a)(1). In order for the Notice of Claim of Lien to be recordable under section 1403(a)(3), it must contain or be accompanied by "a statement by the air carrier certificated under . . . section [604(b) of the Act, 49 U.S.C. § 1424(b)]." *See* 14 C.F.R. § 49.53(a) (2). The Notice of Claim of Lien does not meet that requirement. Indeed, there is not even a showing that Holiday was "an air carrier certificated under section 604(b) of the Federal Aviation Act of 1958. . . ." *See* 14 C.F.R. § 49.53(a)(1). Moreover, the Notice of Claim of Lien falsely states that the "component parts" that respondent repaired and overhauled were located in Lakewood, Colorado. In fact, as respondent well knew as has subsequently admitted, the "component parts" were redelivered to Holiday in California and were reinstalled on Holiday's aircraft in California. Clearly, the Notice of Claim of Lien was not recordable under 1403(a)(3).

struments affecting the title to, or any interest in, *specifically identified* aircraft propellers. [App. 51]. The regulations promulgated under section 1403(a)(2) provide that if an interest is claimed in a propeller, it must be "specifically identified by make, model, horsepower, and manufacturer's serial number. . . ." 14 C.F.R. § 49.43(a). [App. 52].

The court of appeals disregarded these requirements.

In 1959 section 1403(a) (2) was amended so as to permit the recordation of interests in specifically identified aircraft propellers. With respect to that amendment, House Report No. 445, 86th Cong., 1st Sess. (June 8, 1959), reprinted in 1959-2 U.S. Code Cong. & Admin. News. 1762, 1762-1763 (1959), states:

> "This legislation would amend the Federal Aviation Act of 1958 so as to permit the recording of security interests in specific aircraft propellers, as well as aircraft engines. Propellers for modern transport-type aircraft are complex and expensive, sometimes costing as much as $25,000 each, and usually are readily interchangeable from one engine to another.
>
> "Present law permits the recording of security interests in specified aircraft engines and propellers when in a designated location under a so-called basket mortgage, but no provision is made to record a security interest in a propeller except as part of a complete aircraft or under a basket mortgage. Because of the interchangeability of modern-type propellers, this is not satisfactory to prospective suppliers of equipment and hinders air carriers in efforts to modernize their fleets. It is logical that the protection afforded by existing law to security owners of aircraft should be extended to include those having a separate security interest in propellers."

Clearly, Congress intended that if an entity claimed an interest in an aircraft propeller it should be able to record

that claim of interest by specifically describing the propeller. Further indication that interests in propellers are to be treated separate from interests in other parts of aircraft is found in 49 U.S.C. § 1401(6) ["aircraft engine" excludes propeller], 49 U.S.C. § 1301(12) ["appliances" excludes propellers] and 49 U.S.C. § 1301(37) ["spare parts" excludes propellers].

The court of appeals disregarded this legislative history and expressed congressional intent.

The case law that exists on the subject upholds the requirement that if an instrument claims an interest in aircraft propellers, those propellers must be specifically identified. In *United States v. United Aircraft Corp.*, 80 F.Supp. 52 (D.Conn. 1948), Hoosier executed two aircraft mortgages to the War Assets Corporation. Those mortgages were recorded with the Civil Aeronautics Administration. The mortgages described the mortgaged aircraft by the C.A.A. aircraft number and by the manufactuer's serial number for the airplane and each mortgage further provided that it included "all parts, engines, equipment and accessories." *Id.* at 54. The Court, on these facts, was asked to determine whether the United States had a perfected lien on the aircraft engines. In holding that there was *not* a perfected lien on the engines, the Court stated:

> "Here we have conveyances which purport to affect the title to aircraft and also to portions thereof, the engines, which are easily removable and interchangeable, and often in practice so removed and interchanged. The Civil Aeronautics Act, 49 U.S.C.A. § 401 et seq., in section 523(b), does not attempt to define the particularity with which the aircraft or portions thereof shall be described. The particularity of description intended must, therefore, be such particularity as would be reasonably sufficient for notice to

third parties whose rights against the transferees of title without delivery of possession are to be cut off by the recording under the statute. Among those third parties will obviously be engine overhaulers.

Obviously, too, the description used in the mortgages in suit is totally lacking in particularity sufficient to warn such artificers of the inclusion of these particular engines in the claimed mortgage lien. In view of the removability and interchangeability of engines, a mortgage description to cover them should sufficiently identify them so that recourse to the records would reveal their inclusion in the conveyance.

An airplane engine in itself is a saleable article. It may be easily removed from an aircraft just as a machine tool may be removed from its position in a factory. In fact, in view of the requirement of proper maintenance in Paragraph 9 of the mortgage, and the fact that major overhaul is periodic requisite of aircraft engines, it was contemplated by the parties that such removals would occur at periodic intervals. Since the only description in the mortgage of the engine is in a definition of aircraft as including "all parts, engines, equipment and accessories * *," it is not sufficiently definite to give notice of the lien of the mortgage on the engines to third parties." [80 F.Supp. at 54.]

Significantly, the description of the liened engines in *United States v. United Aircraft Corp., supra,* was more specific than the description of the allegedly liened propellers in this case. Here, other than giving the aircraft make, model and serial number and its F.A.A. registration number, *respondent gave no indication whatsoever that it claimed a lien on the propellers or any other portion of the aircraft other than the airframe.* Clearly, as held in *United States v. United Aircraft Corp., supra* at 54-55, respondent's Notice of Claim of Lien-Aircraft "lacks a sufficiency of de-

scription of the . . . [propellers] to meet any standard of fair notice to third persons dealing with the . . . [propellers] under the circumstances in which . . . [propellers] are used and maintained."

In *In re Manufacturers Air Transport Service, Inc.*, 1 B.C.D. 69 (Bkrtcy Ct., S.D. Ill. 1974), a bank's security agreement, duly recorded with the F.A.A., described an aircraft by serial and model number, but did not in any way mention or describe any engines, propellers, spare parts or appliances. The trustee in bankruptcy contended that the bank did not have a perfected security interest in anything but the airframe. In holding for the trustee the bankruptcy court first quoted from *United States v. United Aircraft Corp., supra,* and then concluded:

> "Applying this decision and the material portions of Section 1403 to the instant case it is clear that *in order for the bank to have a valid security interest in the proceeds from the sale of the sale of the propellers and engines, it must have a security agreement describing them specifically and this security agreement must be properly recorded with the F.A.A. In the instant case the security agreements which were executed and filed do not contain such a description and therefore the lien of the bank is invalid.* It should be noted that the position of the bank in the instant case is even weaker than that of the War Assets Corporation in the United Aircraft Corporation case cited above because here neither the engines or propellers are mentioned at all in the security agreement while in that case the term "engines" did appear in the security instrument." [1 B.C.D. at 72; emphasis added.]

See also, *International Atlas Services, Inc. v. Twentieth Century Aircraft Co.*, 251 Cal.App.2d 434, 59 Cal. Rptr. 495 (1967), *cert. denied,* 389 U.S. 1038 (1968).

The court of appeals disregarded both the rationale and the holdings of these cases.

Finally, Professor Gilmore agrees that "an engine or propeller covered by a § 503(a)(2) [now 1403(a)(2)] lien must be 'specifically identified'. . . ." 1 Gilmore, Security Interests in Personal Property, § 13.5, p. 422 (1965). The court of appeals disregarded that authority as well.

Striking out on its own, the court of appeals held that even though respondent had not specifically described the propeller against which it claimed a lien, respondent had perfected its lien by describing the aircraft on which the propeller was temporarily installed. The court of appeals apparently reached this remarkable conclusion by adopting the following argument made by respondent at pages 26-27 of its brief:

> "The sufficiency of the description of the collateral in Pacific Propeller's lien notice is supported by the application of the law of accessions which grants Pacific Propeller a security interest in the aircraft as a whole after the repaired component parts were reinstalled on it. Washington law provides that a security interest in goods which are installed in or affixed to other goods attaches to the whole and is superior to other security interests. . . . This principle was adopted in the Uniform Commercial Code's treatment of the law of accessions which was, in turn, adopted by Washington as RCW 62A.9-314. This statute provides, in part, as follows:
>
> > (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to RCW 62A.9-315(1).

> Although the Washington version of the Code is, by definition, not directly controlling as to the chattel lien law, the Code treatment of the law of accessions is identical to Washington common law on that subject and may be recognized as controlling law in analogous fact situations."
> [Footnote and citations omitted.]

The court of appeals should have recognized the many errors of that argument.[6]

First, and most basic, as pointed out in 1 Am.Jur. 2d, Accession and Confusion § 4, pp. 275-276 (1962):

> "When accessories and other materials are added to or incorporated in property belonging to another, the right of the owner of the original property to claim title to such additions or accessories depends upon whether they become an integral part of the original article, or whether they are identifiable and capable of detachment without harm to either the principal article or the thing attached."

See Hunter v. Scruggs Drug Store, Inc., 113 F.2d 971, 974 (4th Cir. 1940).

Unquestionably, the propeller assembly against which respondent could have asserted a lien was readily identifiable and removable from the aircraft on which it was installed. Therefore, it did not become part of the aircraft by accession when it was installed thereon. *Aero Corporation v. Associated Aerial Survey Co.*, 184 F.Supp. 821, 824 (D.Md. 1960); *see* Annot., 43 A.L.R.2d 813 (1955).

Second, even if the Uniform Commercial Code treatment of the law of accessions were identical to Washington com-

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[6]That the court of appeals did not recognize the incorrectness of respondent's argument was apparent from its statement during oral argument comparing the relationship between an engine-propeller assembly and an aircraft to the relationship between a roof and a house.

mon law, a proposition that is not free from doubt, respondent's interpretation of the provisions of R.C.W. § 62A.9-314 is incomprehensible. That section of the law provides that if goods in which respondent had a security interest are affixed to and become a part of other goods, respondent's security interest *in its goods* takes priority over security interests of others in the whole, with certain exceptions. *The law does not provide, as asserted by respondent, that it may assert a security interest in the whole*. Thus, respondent cannot assert even by analogy that he has a lien on the entire aircraft on which the subject propeller assembly was installed.[7]

If the opinion of the court of appeals is allowed to stand, most of the recordation provisions of the Federal Aviation Act and its regulations will be rendered useless. The statutory scheme of segregating recorded interests in aircraft from recorded interests in specific engines and propellers and from the "basket mortgage" provisions of section 1403(a)(3) will be ignored, and there will be no certainty as to who holds what interest in which aircraft, aircraft engine or propeller. These are not fanciful predictions; rather, they flow directly from the holding of the court of appeals that one has an interest only in a specific propeller may perfect a lien against that propeller by claiming a lien against the aircraft on which the propeller was installed at the time the lien was recorded.

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[7]Interestingly, both respondent and the court of appeals neglected to refer to R.C.W. § 62A.9-314(3)(b), which provides that respondent's "security interest" in goods that have been attached to other goods *do not* take priority over "a creditor with a lien on the whole subsequently obtained by judicial proceedings." Under section 70(c) of the Bankruptcy Act, 11 U.S.C. § 110(c), petitioner was asserting the rights of such a creditor. Therefore, even under respondent's analogy, respondent's lien was invalid as against petitioner.

The problems caused by the opinion of the court of appeals are enormous and insoluble. For example, if one who holds a lien against a propeller is permitted to perfect that lien by asserting a lien against the aircraft on which the propeller is attached without a description of the propeller in the lien document, what happens when the propeller is removed, repaired and installed in a different aircraft? Is there still a lien against the aircraft on which the propeller was once, but no longer is, installed? Is there a lien against the specific unidentified propeller? If there is a default, can the lienholder execute against the aircraft or the propeller? These questions will not arise if section 1403(a)(2) and the regulations promulgated thereunder are given the interpretation intended by Congress. That interpretation, of course, requires a review and reversal of the decision of the court of appeals in this case.

C. If Review by Certiorari Is Unwarranted, This Court Should Summarily Reverse the Decision of the Court of Appeals.

This Court may determine that a review on certiorari of the decision of the court of appeals is inappropriate. In that case, petitioner urges that the errors committed by the court of appeals are so manifest as to justify a summary reversal pursuant to Rule 23.1 of the Rules of this Court.

Respectfully submitted,

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Attorneys for Petitioner.

Of Counsel

GENDEL, RASKOFF, SHAPIRO & QUITTNER.

APPENDIX A.

Memorandum Opinion.

United States District Court, Central District of California.

In re Holiday Airlines Corporation, a California corporation (formerly doing business as Holiday Recreational Resources and Holiday Resources Corp.) Bankrupt.

Curtis B. Danning, as Trustee in Bankruptcy of Holiday Airlines Corporation, Cross-Complainant, vs. Pacific Propeller, Inc., a Washington corporation, Cross-Defendant.In Bankruptcy No. 75-02237 (LTL) (RO).

In this contest, the Trustee in Bankruptcy seeks to invalidate an artisan's lien asserted by PACIFIC PROPELLER (PROPELLER) against an asset of the estate. The factual background is as follows:

PROPELLER conducts its business in Kent, Washington. It engages in the business of overhauling and repairing propellers and propeller accessories for commercial aircraft. HOLIDAY AIRLINES (HOLIDAY), a California corporation, was engaged in business as an air carrier in California.

HOLIDAY sent a propeller and propeller assembly to PROPELLER for repair. The units were received and repaired by PROPELLER in Washington at a charge by PROPELLER of $21,259.58. Thereupon, PROPELLER (i) redelivered the units to HOLIDAY; and (ii) simultaneously filed with the Federal Aviation Authority (FAA) in Oklahoma City a claim of lien upon the aircraft for the amount due for the labor and services on the propeller and propeller assembly. The units were received by HOLIDAY and reinstalled on the aircraft from which they had been removed. Thereafter, HOLIDAY was adjudicated a bankrupt in Cal-

ifornia. The Trustee took possession of the aircraft and sold it for cash pursuant to a stipulation with PROPELLER that PROPELLER's rights, if any, were transferred to the proceeds of sale.

PROPELLER asserts a lien under the law of the State of Washington against the proceeds of sale in the amount of its charges, $21,259.58. The Trustee denies that PROPELLER has a lien and claims the proceeds free and clear of any rights of PROPELLER.

I. *The Choice of Law Problem.*

We examine first the basis for PROPELLER's claim of lien.

Washington law provides for an artisan's lien in favor of persons performing labor or furnishing materials in the construction or repair of a chattel at the request of its owner. 1974 Revised Code of Washington §60.08.010 *et seq.* (1975) (hereafter R.C.W.). This lien survives redelivery of the chattel to the owner if the artisan files a "Chattel Lien Notice" within 60 days of redelivery. The statute provides a form of notice and specifies the information to be included. PROPELLER's claim of lien is based on this Washington statute. The Trustee denies that Washington law governs and asserts that California law is controlling with respect to PROPELLER's rights.

California law includes two different artisan's lien statutes pertinent to this inquiry. The general artisan's lien statute, C.C.§3051, was enacted in 1872 and has existed continuously since that time, although frequently amended. It provides, in substance, that one who makes, alters or repairs any article of personal property at the request of the owner has a lien upon such property for his reasonable charges for work done and services performed. However, this lien is

dependent upon possession and is lost if the lien claimant voluntarily redelivers the chattel.

The other California statute is C.C.P. §1208.61 (enacted 1953), which deals specifically with persons who perform labor or furnish supplies or materials in the repair of aircraft. The statute grants the artisan a lien for compensation. This lien is also dependent upon possession.

In support of the application of California law, the Trustee urges:

1. The laws of the state where adjudication occurs should be applied to determine the validity, nature and extent of liens against assets of the estate. HOLIDAY was adjudicated in California and its law is controlling[1]

2. The law of the state where the property is situated should be applied to determine the validity, nature and extent of liens against assets of the estate. At all times the aircraft was located in California.[2]

3. Relevant contacts between HOLIDAY and the State of California result in a governmental interest which requires application of California law to determine the validity, nature and extent of liens on assets of HOLIDAY.[3]

PROPELLER urges as a basis for the application of Washington law that:

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[1]*In re Knox-Powell-Stockton Co.*, 100 F. 2d 979, 982 (9th Cir. 1939).
[2]*Victor Gruen Associates, Inc. v. Glass*, 338 F. 2d 826, 829 (9th Cir. 1964); *Loye v. Denver United States National Bank*, 341 F. 2d 402 (10th Cir. 1965); *Potucek v. Cordeleria Lourdes*, 310 F. 2d 527 (10th Cir. 1962); *Porter v. Searle*, 228 F. 2d 748 (10th Cir. 1955).
[3]*Reich v. Percell*, 67 Cal. 2d 551 (1967); *Dixon Mobile Homes, Inc. v. Walters*, 47 Cal. App. 3d 964 (1975); *Kasel v. Remington Arms Co.*, 24 Cal. App. 3d 711 (1972).

1. The law of the state which has the most significant relationship to the parties, chattel and security interest should apply.[4]

2. The location of the chattel at the time the security interest attaches is an overriding consideration in determining the choice of law.[5]

A review of the cases and authorities impels the conclusion that Washington law should be applied in this case. While general principles can be extracted which seem to argue to the contrary, careful analysis of the facts of this case, in the light of the principles involved, clearly dictate the application of Washington law.

The Restatement of Conflicts, Second (hereafter Restatement) collects and analyzes the alternative choices of law to be applied in such cases. Following a general discussion of the interests of competing jurisdictions (Restatement §6 (1971)) the Restatement specifically treats the conflicts of law problem in the context of security interests in chattels. Section 251 provides:

> "1. The validity and effect of a security interest in a chattel as between the immediate parties are determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the parties, the chattel and the security interest under the principles stated in §6.
>
> 2. *In the absence of an effective choice of law by the parties, greater weight will usually be given to the*

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[4]*Northern Illinois Corp. v. Bishop Distributing Co.*, 284 F. Supp. 121 (D.C. Mich. 1968); *J.C. Equipment, Inc. v. Sky Aviation, Inc.*, 498 S.W. 2d 73 (Mo. App. 1973); *Suburban Trust and Savings Bank v. Campbell*, 250 N.E. 2d 118 (Ohio, 1969).

[5]*Industrial National Bank of Rhode Island v. Butler Aviation*, 370 F. Supp. 1012 (1974); *Southern Jersey Airways, Inc. v. National Bank of Secaucus*, 261 A. 2d 399 (1970).

> *location of the chattel at the time that the security interest attached than to any other contact in determining the state of the applicable law.*'' (Emphasis added) *Id.*, §251.

Comment ''e'' reinforces the view:

> ''The values of certainty and predictability of result are furthered as a consequence, since the place where a chattel is situated at a given time will either be known to the parties or else, except in rare instances, will be readily ascertainable. Likewise, since interests in the chattel, or group of chattels, form the subject-matter of the security interest, the place where the chattel, or group of chattels, was located at the time the security interest attached can be considered the latter's focal point.'' *Id.* at 95.

Comment ''f'' makes the foregoing rule applicable to nonconsensual liens.

> ''The rule of this Section applies to liens that arise by operation of law and are not dependent upon the intentions of the parties. The rule applies, for example, to a vendor's lien, a lien acquired by levy of execution, a lien for labor or supplies and an attorney's lien. . . . A person who deals with a chattel should have a definite and precise basis for determining whether he will acquire a nonconsensual lien on the chattel by reason of such dealing. Such a person would usually expect that the local law of the state where he dealt with the chattel would be applied to determine whether he had acquired a nonconsensual lien thereon.'' *Id.* at 96.

The principle enunciated in the Restatement §251 has been approved in the Ninth Circuit in *Colonial Trust Co. v. Goggin*, 230 F. 2d 634 (9th Cir. 1955), wherein the court said:

> " . . . where an article of personal property of whatever character is in possession of one who has expended work and labor thereon at the request of a person lawfully in possession, the domestic law of the place of possession governs as to the extent and character of the lien." *Id.* at 637.

While this concept was not dispositive of any issue in the case, the quoted language would seem to place the Ninth Circuit in general accord with the rule articulated in the Restatement §251.

The application of Washington law in this case is consistent with common sense and fair dealing. The Washington corporation received chattels in the State of Washington; performed work, labor and repairs on the chattels in the State of Washington; and was entitled to be paid in the State of Washington. It is difficult to rationalize a basis to apply the law of some other jurisdiction to determine whether a lien arose in the State of Washington as a result of this transaction. The cases cited by the Trustee compel no different result under the facts of this case.

II. *The Preemption Problem.*

Washington law is clear and specific in providing a lien for labor and materials under the circumstances existing in this case. The statute is equally positive in providing that the lien survives redelivery of the chattels to the owner if, within 60 days of redelivery, the lien claimant files a notice of lien in the office of the county where the chattels are located. Upon filing the notice, the lien will prevail over rights of third persons which attach subsequent to the commencement of the artisan's performance.

PROPELLER attempted to fulfill the filing requirements by filing its claim of lien within 60 days of redelivery. However, PROPELLER did *not* file in the State of Washington, as provided by the statute. Instead, PROPELLER

filed its chattel lien notice with the FAA in Oklahoma City. The Trustee asserts that such filing was ineffective to preserve any lien PROPELLER may have acquired. In support of this contention, Trustee argues:

1. PROPELLER failed to comply with Washington law in that no claim of lien was filed, as required by Washington law.

2. The filing provisions of the federal statute do not apply to artisan's or mechanic's liens, but apply only to consensual liens.

PROPELLER responds as follows:

1. Congress has prescribed the sole and only method by which liens on registered aircraft may be recorded;

2. This statute has preempted the field of recordation of liens upon registered aircraft;

3. As a consequence, filing in the State of Washington would have been ineffective for any purpose; and

4. PROPELLER was compelled to file with FAA in order to preserve its lien and perfect it against third parties who subsequently acquired rights in the aircraft.

Resolution of this debate requires an examination and analysis of the federal statute and the interaction between the federal statute and the artisan's lien statute of the State of Washington.

The Federal Aviation Act of 1958 (49 U.S.C. 1301 *et seq.* (1976) (hereafter Act)) provides, in substance, that: (i) the Secretary of Transportation shall record each conveyance which affects title to or any interest in civil aircraft; as well as any lease, mortgage, equipment trust, contract of conditional sale or other instrument executed for security purposes which affects title to or any interest in engine or propellers of specified rated horsepower capacity, or which relate to engines, propellers and appliances or spare parts

maintained for installation or use in aircraft of air carriers certificated under the statute.[6]

(ii) until filed for recordation, no conveyance or instrument described in the statute shall be valid except as between the parties to the transaction and those with actual notice thereof;[7] (iii) the conveyance or instrument is effective from date of recordation;[8]

(iv) the Secretary shall keep a record of the time and date of filing, and of the time and date of recordation. The document shall be recorded in order of receipt and indexed according to: (1) the identifying description of the aircraft, aircraft engine or propeller and in specified cases according to the location thereof; and (2) the names of parties to the conveyance or other instrument.[9]

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[6]§1403(a) requires the Secretary of Transportation to record each of the following:

"(1) Any conveyance which affects the title to, or any interest in, any civil aircraft of the United States;

(2) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any specifically identified aircraft engine or engines of seven hundred and fifty or more rated takeoff horsepower for each such engine or the equivalent of such horsepower, or any specifically identified aircraft propeller capable of absorbing seven hundred and fifty or more rated takeoff shaft horsepower, and also any assignment or amendment thereof or supplement thereto;

(3) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any aircraft engines, propellers, or appliances maintained by or on behalf of an air carrier certificated under Section 1424(b) of this title for installation or use in aircraft aircraft engines, or propellers, or any spare parts maintained by or on behalf of such an air carrier, which instrument need only describe generally by types the engines, propellers, appliances, and spare parts covered thereby and designate the location or locations thereof; and also any assignment or amendment thereof or supplement thereto." *Id.* §1403(a).

[7]§1403(c).

[8]§1403(d).

[9]§1403(f).

Regulations have been promulgated which purport to define the items which are recordable under the statute. (See 49 U.S.C. 1655) Pertinent to our inquiry:

1. 14 C.F.R. 49.41 describes the kinds of conveyances which may be recorded as including: Any lease, a notice of tax lien or other lien (except a notice of Federal Tax Lien referred to in §49.17(a)), and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which affects title to, or any interest in, aircraft engines or propellers of rated capacity.[10]

2. 14 C.F.R. 49.51 further describes the kinds of conveyances which may be recorded under §1403 as including: Any lease, a notice of tax lien or other lien (except a notice of Federal Tax Lien referred to in §49.17(a)), and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which affects title to, or any interest in, designated aircraft engines, propellers, appliances or spare parts.[11]

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[10]14 C.F.R. 49.41 (1976) describes the kinds of conveyances which may be recorded under §1403, as follows:

"(a) Any lease, a notice of tax lien or other lien (except a notice of Federal Tax Lien referred to in §49.17(a)), and any mortgage equipment trust, contract of conditional sale, or other instrument executed for security purposes, which affects title to, or any interest in, any specifically identified aircraft engine of 750 or more rated takeoff horsepower or the equivalent of that horsepower, or a specifically identified aircraft propeller capable of absorbing 750 or more rated takeoff shaft horsepower." *Id.*, §49.41.

[11]14 C.F.R. 49.51 (1976) further describes the kinds of conveyances which may be recorded under §1403 as including:

"(a) Any lease, a notice of tax lien or other lien (except a notice of Federal Tax Lien referred to in §49.17(a)), and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which affects title to, or any interest in, any aircraft engine, propeller, or appliance maintained by or on behalf of an air carrier certificated under Section 604(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1424(b)) for installation or use in aircraft, aircraft engines, or propellers, or any spare parts, maintained at a designated location or locations by or on behalf of such an air carrier." *Id.*, §49.51.

We are fortunate to have legislative history which explains the purpose and function of this legislation. For example, we are told that the original Civil Aeronautics Act of 1938:

> ". . . contained a provision which provided for the establishment of a central, national recording system for all instruments affecting title to or interest in civil aircraft of this country. This provision was incorporated in Section 503 [currently §1403] of the Federal Aviation Act of 1958 substantially without change. It continued the previously established recording system and provides that no conveyance or instrument affecting aircraft shall be valid until filed for recordation except as to parties to the instrument or persons with actual knowledge of its existence. When the instrument has been filed for recordation under the law, all persons are deemed to have notice of its existence and its affect on title to the property covered thereby. Consequently, to determine whether there are any encumbrances on the aircraft, it is only necessary to consult the central file." 2 U.S. Code Cong. and Ad. News 2319, 2320 (1964).

As we have seen, the Revised Code of Washington authorizes the local filing of a notice of artisan's lien. Upon such filing, the artisan's lien is given the character and status of a nonpossessory lien upon personal property.

Query: What if the subject matter of that lien is an aircraft, engine, propeller, or spare part subject to the federal recording statute? Does the federal statute control and displace the state law so that the filing must be done in accordance with the federal statute?

The answer is clear. It is now well settled that the provisions of the federal statute have displaced and preempted state law in respect to the place and requirements of recording and the effect of failure to record as to subsequent

bona fide purchasers without notice. As Professor Gilmore has pointed out:

> "There can be no room for doubt that the §503 [currently §1403] recording system applies to all 'civil aircraft of the United States' whether or not they are used or intended for use interstate, *and that the system is exclusive of any state recording or filing system.* Both these questions have been litigated, since the statute itself was not explicit; both have been soundly decided, with excellent opinions by state and federal courts; they should not be raised again." (Emphasis added) 1 Gilmore, *Security Interest In Personal Property* §13.5 at 424 (1965).[12]

Upon this foundation PROPELLER argues that the federal statute preempts state law insofar as recordation is concerned; that PROPELLER was compelled to file with the FAA; that any other filing would have been wholly ineffective and contrary to the avowed purpose and intent of the federal statute disclosed by its express language and legislative history.

"Wrong," says the Trustee. The federal recording statute is only applicable to the filing and recording of *consensual* liens. Neither artisan's nor mechanic's liens were intended

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[12]See also: *Industrial National Bank of Rhode Island v. Butler Aviation International, Inc.*, 370 F. Supp. 1012 n. 4 (E.D. N.Y. 1974); *J. C. Equipment, Inc. v. Sky Aviation, Inc.* 498 S. W. 2d 73 (Mo. App. 1973); *Southern Jersey Airways, Inc. v. National Bank of Secaucus,* 108 N.J. Super. 369, 261 A. 2d 399 (App. Div. 1970; *Dowell v. Beech Acceptance Corporation, Inc.* 3 Cal. 3d 544, 91 Cal. Rptr. 1 (1971); *Northern Illinois Corporation v. Bishop Distributing Company,* 284 F. Supp. 121 (W.D. Mich. 1968); *International Atlas Services, Inc. v. Twentieth Century Aircraft Company,* 251 Cal. App. 2d 434, 59 Cal. Rptr. 495 (1967); *Continental Radio Company, Inc. v. Continental Bank and Trust Company,* 369 S. W. 2d 359 (Tex. Civ. App. 1963); *Blalock v. Brown,* 78 Ga. App. 537, 51 S. E. 2d 610 (1949); *United States v. United Aircraft Corporation,* 80 F. Supp. 52 (D.C.D. Conn. 1948); *In re Veterans' Air Express Company, Inc.*, 76 F. Supp. 684 (D.C. N.J. 1946).

to be included within its scope. Recording such a claim with the FAA accomplished nothing.

Is this contention well taken?

The answer is not readily apparent from the available authorities. The statute speaks of "any conveyance" (49 U.S.C. 1403(a)) and "any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes." 49 U.S.C. 1403(b), (c). The regulations are similarly indistinct and speak of "any lease, notice of tax lien, or other lien" and "any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes." 14 C.F.R. 49.41, 49.51.

A "chattel lien notice" under Washington law (R.C.W. 60.08.020) does not appear to be within the contemplation of language in the statute and regulations which refers to "any conveyance", or "any lease" or "mortgage", "equipment trust", or "contract of conditional sale". Opinion may vary, however, with respect to the language "other instrument executed for security purposes in §§ 1403(b), 1403(c), 49.41 and 49.51; and the words "or other lien" in §§ 49.41 and 49.51. It must be noted particularly that §49.41 and §49.51 use "or other lien" in a grammatical context that seems to distinguish "or other lien" from "or other instrument executed for security purposes". Moreover, the words "or other lien" are used in the clause "a notice of tax lien *or other lien*" (emphasis added). Is an artisan's lien encompassed within the words "or other lien"?

Little help is available from other sources. We are told that in actual practice the FAA *does* accept artisan and

mechanic's lien notices presented for filing.[13] On the other hand, the former provisions of 49 U.S.C.A. 1404 required instruments to be acknowledged in order to be eligible for recording. Professor Sigman views that as some indication that artisan's and mechanic's liens were not intended to be recorded within the statute. Sigman, *supra* at 322 n. 7. He concludes that §§1403(a) (1), (2) and (3):

> ". . . seem to apply only to instruments reflecting consensually created interests. On this construction it appears that Congress did not intend to comprehend within the system mechanic's liens or other claims which do not arise from an instrument or are not consensually created." *Id.* at 322.

The existing case law is ambiguous.

Continental Radio Company, Inc. v. Continental Bank and Trust Company, supra note 12, at 14, was a dispute between a prior artisan's lienor and a subsequent encumbrancer for value. Both claimed priority in an aircraft. The artisan's lien was based on a Texas statute creating a lien in favor of one who supplied labor and materials. The lien did not depend upon any written instrument, nor did state law provide for filing or recordation of the lien. However, the artisan's lienor sent a letter to the FAA claiming its artisan's lien and enclosed documents evidencing the existence of the lien. None of these instruments complied with the federal statutory requirements for filing. Thereafter, the bank acquired a security interest in the aircraft without actual knowledge of the artisan's lien claim or knowledge of such

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[13]Sigman, The Wild Blue Yonder; Interests in Aircraft Under Our Federal System, 46 S.Cal.L.Rev. 316 (1973) at 322 n. 27; *Continental Radio Company, Inc. v. Continental Bank & Trust Co.*, 369 S.W. 2d 359 (Tex. Civ. App. 1963); *Southern Jersey Airways, Inc. v. National Bank of Secaucus*, 261 A. 2d 399 (N.J. 1970); *Industrial National Bank v. Butler Aviation International, Inc.*, 370 F. Supp. 1012 (E.D. N.Y. 1974).

facts as would cause a reasonable man to make further inquiry. The bank relied upon its status as a bona fide encumbrancer without notice. The artisan's lienor contested this and asserted that the bank had constructive notice of its claim of lien—based on the letter and enclosures sent to the FAA. The court sustained the bank's priority, and rejected the artisan's assertion of constructive notice

> "because the lien would not have been disclosed by an examination of the instruments properly filed with the agency". *Id.* at 362.

The clear implication of this decision is that the artisan's lien would have constituted constructive notice if evidence thereof had been filed in a manner complying with the requirements of the federal statute. This court harbored no doubt that an artisan's lien was recordable under the federal statute, nor is there any suggestion in the decision that the federal statute was intended to apply only to consensual liens. The refusal of the court to view the noncomplying documents as imparting constructive notice is based solely upon the ground that the noncomplying documents filed by the artisan would not disclose the evidence of his lien to one who searched the records.

Southern Jersey Airways, Inc. v. National Bank of Secaucus (hereafter *Southern Jersey*) and *Industrial Nat. Bank v. Butler Aviation International, Inc.* (hereafter *Butler*), *supra* note 12, at 14, are cited as cases which reject the recordability of artisan's and mechanic's liens under the Federal Aviation Act. In *Southern Jersey* the bank held a prior federally recorded security interest in an aircraft. Subsequently, an artisan's lien on the aircraft was created under New Jersey law for storage, repairs, maintenance and supplies. Under New Jersey law the artisan's lien is given priority against all other security interests—whether the artisan's lien is recorded or not. The artisan was in possession of the aircraft. When the owner defaulted on its loan the

bank attempted to foreclose and actually held a foreclosure sale without possession. Thereupon, the artisan (i) filed a Notice of Aircraft Lien with the FAA, which contained neither the signature nor acknowledgement of the owner of the aircraft; and (ii) filed suit to determine priorities between its artisan's lien and the bank's security interest.

The lower court entered summary judgment in the bank's favor, upon the grounds that (i) the bank's security interest was federally recorded with the FAA, and (ii) the artisan's lien was not so recorded until after default and the institution of foreclosure proceedings.

The Appellate Division reversed and remanded to the lower court to determine priorities in accordance with state law. The court framed the issue before it in these words:

> "In other words, apart from the effect of the Federal Aviation Act plaintiff herein would prevail over defendant under New Jersey law. The crucial inquiry here is whether the recording provisions of the Federal Act were intended or should be construed to effect a different result." *Southern Jersey* at 403.

This involved two specific questions, posed for decision:

1. Did the artisan's failure to record his lien invalidate it as against the bank's security interest?
2. Does the bank's security interest prevail by virtue of §1403 of the Act because it was first in time and federally recorded?

The first question was answered in the negative. The artisan's failure to record was immaterial.

Why? The federal statute was intended to provide a single preemptive federal system for registering (a) instruments of title comparable to state registration of title to motor vehicles, and (b) for recording security documents of the sort normally comprehended by state recording laws dealing with written consensual security interests in personal property. The consequences of failure to record (§1403(c) in-

validity against third parties) only results from failure to record a recordable instrument. The language of the Act and the regulations promulgated thereunder which describe what can be recorded "make it rather dubious that the drafters actually contemplated recordation of" an artisan's lien under New Jersey law. *Southern Jersey* at 406. Such a lien is not evidenced by any instrument executed by the obligor and cannot be acknowledged by the obligor. Recording of plaintiff's lien could have given the defendant bank no constructive notice of plaintiff's rights because the bank's security interest was acquired *prior* to the creation of plaintiff's artisan's lien. No search of the record by the bank would have disclosed plaintiff's claim. To destroy plaintiff's rights under state law would senselessly subvert New Jersey law without serving any purpose or fulfilling any objective of the federal recording act.

The second question was also answered in the negative. State law must be applied to determine questions of priorities between conflicting security interests in aircraft. Recording under the federal statute does not per se grant priority as against other interests. The fact of the recording of the bank's interest does not per se create priority as against the artisan. That inquiry is remitted to state substantive law.

Does this case hold that artisan's liens are not recordable under the federal statute? Clearly not. The majority *and* concurring opinion expressly avoid any such implication. The majority says:

> "We note, preliminarily, that determination of this particular case requires no definitive holding as to whether a New Jersey aircraft mechanic's lien is recordable under 49 U.S.C.A. §1403(a)." *Id.* at 406.

The concurring opinion agrees:

> "The question of whether an aircraft mechanic's lien is federally recordable is one that should be left for

> decision to a case in which comstructive notice may be a material issue. . . . Constructive notice is of no significance in the case before us. . . ." *Id.* at 412, 413.

The facts in *Butler* are essentially the same as in *Southern Jersey*. The owner of the aircraft gave the bank a security interest to secure a loan. The security interest was duly recorded with FAA. Subsequently, the owner became indebted to the artisan for storage and related charges for which New York law gave the artisan in possession a lien. After default, the bank sought possession of the aircraft. The artisan refused to relinquish possession. The bank filed suit, urging that 49 U.S.C. 1403 has preempted the field of aircraft liens and that plaintiff's federally recorded priority interest is entitled to priority over the state-created artisan's lien which has not been federally recorded. The defendant urged that he is not required to record his possessory artisan's lien with FAA, and that under New York law the artisan's lien has priority over all other security interests, prior or not.

The court sustained the defendant's position and refused to permit the bank to replevy the aircraft until the artisan was paid. Citing *Southern Jersey* the court held (i) that the language of §1403, its ancestors and its legislative history *do not* support the conclusion that Congress intended to subject state-created possessory liens to federal recording requirements; and (ii) that the federal recording statute did not displace state law dealing with the priorities of conflicting liens.

To the extent that *Southern Jersey* and *Butler* articulate a pattern whereby artisan's liens created by state law are not recordable under the federal recording scheme, they are not persuasive. No search of FAA records by a prospective purchaser or encumbrancer of a registered aircraft would disclose the existence of such liens. Where would the searcher be required to look? When the state law prescribes

an artisan's lien perfected by filing, how does the prospective purchaser or encumbrancer learn of its existence? If the Trustee's position is sustained the searcher must examine records within each state, perhaps within each county.

The language of the statute does not require such a ruling.

The Trustee's argument against recordability of PROPELLER's artisan's lien has other imponderable consequences. Security interests on personal property in the State of Washington may be perfected by filing under the normal provisions of the Commercial Code. If such a security interest relates to aircraft subject to federal registration, filing must occur at the FAA office, under preemption concepts we have already discussed. Washington law also recognizes nonpossessory artisan's liens which may be perfected by filing. When such liens relate to aircraft subject to federal registration, should they not likewise be filed with the FAA office? No, answers the Trustee because these nonpossessory liens are *artisan's liens*.

He is supported in this view neither by (i) the language of the statute, (ii) the definitional provisions of the regulations, (iii) Congressional intent and policy manifest in the legislative history of the Act, (iv) nor the reasoning of the cases upon which he relies.

His contention must be rejected. Filing of the Notice of PROPELLER's lien complied with the mandate of the preemptive federal statute. Such filing cannot be made the predicate for an assertion that the artisan failed to comply with Washington law.

To summarize:

1. PROPELLER acquired an artisan's lien pursuant to Washington law for the labor and material it supplied in the repair and overhaul of the chattels delivered to it by HOLIDAY;

2. The filing and recordation provisions of 49 U.S.C. 1403 *et seq.* preempted and displaced the provisions of the Washington statute relative to the filing and recordation of that lien;

3. PROPELLER's Notice of Claim of Lien was recordable within the purview of 49 U.S.C. 1403; and

4. The filing of the Notice of Claim of Lien with the FAA constituted compliance with Washington law so as to preserve the lien notwithstanding redelivery of the chattels to HOLIDAY.

III. *Did PROPELLER Comply With the Federal Recording Statute?*

The Trustee's attack next focuses on the Notice of Lien which PROPELLER filed with the FAA. He asserts that the Notice of Claim of Lien (hereafter Notice) did not comply with FAA requirements and for this reason the lien was never perfected as against his rights under 70(c) of the Bankruptcy Act. In support of this argument he makes two points:

1. The Notice did not describe any property subject to a lien under Washington law.

2. Regulator R-248 was retained by PROPELLER as its own property and cannot be subject to any lien in favor of PROPELLER.

It must be remembered that Section 70(c) clothes the Trustee with the rights and powers of a judgment lien creditor who obtained a lien by legal or equitable proceedings, on the date of bankruptcy, upon the property of the bankrupt. (*Lewis v. Manufacturers' National Bank*, 364 U.S. 603, 81 S.Ct. 347, 5 L. Ed. 2d 323 (1961)). In order to measure his rights as a judgment lien creditor, we must examine state law, in this instance the law of the State of Washington. Under the Washington statute (R.C.W. 60.08.030) if the

specified notice is filed, the artisan's lien (R.C.W. 60.08.010) has priority over the rights of those who become lien creditors subsequent to the time the artisan furnished labor and supplies (R.C.W. 60.08.030); and in such instances the lien may be enforced against junior or subsequent lien creditors (R.C.W. 60.08.040)

However, if PROPELLER's Notice did not comply with the preemptive federal recording statute, then under Washington law it would not take priority over the rights of a subsequent lien creditor. Accordingly, the Trustee's arguments must be analyzed to determine whether PROPELLER's artisan's lien can survive this 70(c) attack of the Trustee.

1. *The Notice does not describe property which is subject to a lien under the Washington statute.*

The Trustee points out that the Washington statute grants a lien upon chattels to the extent that the artisan furnished labor or materials in the construction or repair thereof. The lien is limited to those specific chattels. HOLIDAY shipped specific parts to PROPELLER. PROPELLER rendered services and supplied materials to repair and overhaul these parts. However, the Notice filed with FAA does not claim a lien upon those chattels. Instead, it asserts a lien on a Lockheed L 188A aircraft, which was never in possession of the artisan. How, asks the Trustee, does a lien on *specific parts* mutate into a lien on the *entire* aircraft?

As we have seen, the federal recording statute provides for the recordation of instruments which affect title to or any interest in specified aircraft engines or propellers and engines, propellers, appliances or spare parts maintained by an air carrier for installation or use in aircraft, engines or propellers maintained for such carrier. 49 U.S.C. 1403(a)(1), (2), (3).

The Notice filed by PROPELLER contains the following data:

1. It describes the aircraft make and model number as Lockheed L 188A.
2. It describes the aircraft serial number as No. 1091.
3. It describes the FAA Registration Number of the aircraft as 971 HA.
4. It describes the reputed owner of the aircraft and specifies the owner's address.
5. It specifies that under the laws of the State of Washington PROPELLER asserts a lien on the aircraft for the labor and overhaul of component parts of the aircraft which services and materials were completed on January 10, 1975.
6. It specifies the reasonable value of the labor, services and materials as $36,778.13.
7. It is signed by the vice president and general manager of PACIFIC PROPELLER, whose signature is acknowledged.

The Trustee urges, however, that the Notice did not contain a specific description of any engine or propeller under §1403(a) (2); nor did it contain any general description, by type, of any engine, propeller, appliance or spare part under §1403(a) (3). Instead, it claimed a lien on an identified aircraft never in its possession. For these reasons, he insists that the Notice did not comply with the federal recording statute and was ineffective to preserve the lien.

What is the test to be applied to determine the sufficiency of the description of collateral contained in a document filed under §1403?

The statute makes no attempt to provide a definitive answer to this question.

§1403(a) (2) deals with instruments affecting title or any interest in "specifically identified" engines or propellers of specified capacity. §1403(a) (3) provides for instruments

affecting title to engines, propellers, appliances or spare parts, and sets forth that such instrument "need only describe generally by types the engines, propellers, appliances, and spare parts covered thereby and designate the location or locations thereof". In §1403(f) the Secretary is told how to index conveyances or instruments received by his office. Subsection (1) distinguishes between documents filed under §1403(a) (2) and those filed under §1403(a) (3). The §1403(a) (2) documents are to be indexed under the identifying description of the aircraft, engine or propeller. In the case of instruments under §1403(a) (3) the location is included as a basis for indexing. In all cases, the Secretary is to index under the names of the parties to the conveyance or instrument.

These are the only guidelines provided by the statute. The sufficiency of a given description and the standards to be applied to make that determination are left to judicial interpretation: the application of an informed discretion, based upon the facts and circumstances before the court.

A document which did not contain information necessary under the indexing directive of §1403(f) would seem to be inadequate. Such a guideline is of no help in the instant case.

Professor Gilmore suggests a rule for guidance in this inquiry in the following words:

> "Although an engine or propeller covered by §503(a) (2) lien must be 'specifically identified,' a security agreement under §503(a) (3) 'need only describe generally by types the engines, propellers, appliances, and spare parts covered thereby and designate the location or locations thereof.'" 1 Gilmore, *Security Interest in Personal Property* §13.5 at 422 (1965).

On the other hand, it is clear that the purpose and intent of the statute was to enable prospective purchasers and en-

cumbrancers to determine the existence of liens and prior encumbrances on the aircraft, engine, propeller, appliance or spare part. A persuasive argument can be made that this objective is fulfilled by any filing which enables a prospective encumbrancer or purchaser to determine the existence of a claim of lien or prior security interest with respect thereto. Under such a test, the significance and sufficiency of the description in each instance would depend on the circumstances of the case. This is not unlike the "seriously misleading" standard applied to determine the sufficiency of financing statements under §9402(8) of the Uniform version of the Commercial Code.

The Notice filed by PROPELLER contained all the data necessary to enable the Secretary to index the lien claim according to (1) the specific aircraft involved; (ii) its location; and (iii) the names and addresses of the owner of the aircraft and the lien claimant. Any potential purchaser or encumbrancer who thereafter checked the records of the FAA would learn that the Lockheed L 188A aircraft, Serial Number 1091, FAA Registration Number 971 HA, owned by the indicated corporation of Lakewood, Colorado, was subject to a claim of lien by PACIFIC PROPELLER for labor, services and materials furnished in the repair and overhaul of component parts of the aircraft, completed on or about January 10, 1975, in the amount of $36,788.13.

The Notice would, therefore, appear to fulfill in every respect the legislative purpose and intent in creating the federal recording system.[14]

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[14]2 U.S. Code Cong. and Admin. News (1964); *J. C. Equipment, Inc. v. Sky Aviation, Inc.*, 498 S. W. 2d 73 (Mo. App. 1973); *Southern Jersey Airways, Inc. v. National Bank of Secaucus*, 108 N.J. Super. 369, 261 A. 2d 399 (App. Div. 1970); *Continental Radio Company, Inc. v. Continental Bank and Trust Company*, 369 S.W. 2d 359 (Tex. Civ. App. 1963); *United States v. United Aircraft*, 80 F. Supp. 52 (D.C.D. Conn. 1948); *In re Veterans' Air Express Company, Inc.*, 76 F. Supp. 684 (D.C. N.J. 1948).

We derive some assistance from other provisions of Washington law.

It is clear in this case that both HOLIDAY and PROPELLER knew and intended from the outset that the units prepared and overhauled by PROPELLER would thereafter be attached to and incorporated in an aircraft owned by HOLIDAY. When the work was completed and prior to the time of redelivery PROPELLER held the chattels subject to its possessory artisan's lien; the owner of the aircraft waited to receive and reinstall the repaired units in the aircraft.

This seems to describe the classic fact situation underlying the development of the law of Accessions: the rules which evolved to govern the rights of the parties where a seller sells goods under a title-retention security agreement, to a buyer whose pronounced intent is to affix and incorporate the goods viz. into a residence, an automobile or an aircraft. Indeed, the Uniform Commercial Code included the law of Accessions in its coverage of commercial transactions. Section 9-314, adopted in the State of Washington as R.C.W. 62A.9-314, addresses itself to the respective rights and priorities between a seller or party owning a security interest in goods on the one hand, and the buyer or secured party asserting a security interest in the end product, i.e., the property into which the goods are incorporated, on the other hand. Section 9-314 regulates priorities between a security interest in goods which are installed in or affixed to other goods and a security interest in the whole in which the goods are installed or affixed. If the security interest in the goods affixed attached before installation or affixation, the security interest in the goods affixed takes priority over existing and subsequent interests in the whole. Perfection is not required in order to protect against interests in the whole which subsequently arise, except under §9-314(3).

It may be asserted, with force, that the provisions of Article IX of the Code are expressly made inapplicable to artisan's liens (R.C.W. 62A.9-104(c), R.C.W. 62A.9-102(1) (a), R.C.W. 62A.9-102(2)), except to the extent that artisan's liens are given priority over Code-created security interests (R.C.W. 62A.9-310).

If the sequelae of such an assertion is that the court should apply different rules of law to the fact situations contemplated by §9-314 because the goods are subject to an artisan's lien under non-Code law, instead of a Code derived security interest, a conundrum is posed for which no answer is readily available. The policy of the State of Washington having been expressed in positive terms with respect to the law of Accessions (R.C.W. 62A.9-314), it is difficult to justify the application of a different policy merely because the lien on the affixed goods is derived from non-Code law, instead of security interest provisions of the Code. The Trustee, of course, cites no authority to justify that approach.

Applying the rule of R.C.W. 62A.9-314 *by analogy* to the case at bar, the lien of PROPELLER had affixed to the goods prior to redelivery. Upon redelivery and the filing of the Notice with FAA, the goods remained charged with that lien. When HOLLIDAY affixed the goods to the aircraft and thereby incorporated the goods into the whole, PROPELLER's lien was perfected and preserved as against one who later claimed an interest in the whole. Accordingly, PROPELLER's lien in the goods has priority over a subsequent judgment lien creditor whose rights against the whole were acquired after PROPELLER's lien was perfected. (R.C.W. 62A.9-314(3) (b)).

The Notice filed by PROPELLER seeks to protect the priority derived from §9-314. If PROPELLER sought to assert a priority over subsequent purchasers, encumbrancers

or lienors who claimed *against the whole aircraft*, it was prudent for PROPELLER to describe the whole aircraft in the Notice of Lien.

Obviously, the priority derived from §9-314 applies only to the affixed goods and not to the whole; nor does the section grant a claim to the whole by one who affixes goods to it. Undoubtedly, PROPELLER could have included in its Notice a description of the affixed goods. Whatever the consequences of its failure to do so in a later dispute between PROPELLER and a subsequent purchaser or encumbrancer, we are not confronted with that problem in this case. We deal with the rights of a subsequent judgment lienor who complains of the Notice filed by the artisan. While the matter is not free from doubt, on balance and in the absence of authorities to the contrary, the Notice must be deemed to be sufficient as against the rights of the Trustee in Bankruptcy under the facts of this case.

2. *Regulator R-248.*

With respect to the Regulator, Serial No. R-248, PROPELLER never returned that unit to HOLIDAY. Instead, PROPELLER redelivered an exchange unit out of stock to HOLIDAY and retained Regulator No. R-248 in its stock after it was repaired and overhauled. How, asks the Trustee, can a claim of lien be asserted with respect to R-248, which HOLIDAY has treated and continues to possess as its own property?

The uncontradicted evidence in this regard was as follows:

1. The repair of component parts of operative aircraft can have serious economic impact on an airline to the extent that repairs necessitate disuse of an aircraft and its removal from scheduled flight service;

2. Custom and usage in the aircraft industry have evolved techniques to enable repairs to be accomplished with the minimum of downtime for the aircraft;

3. One such technique involves the following:

(i) The repair facility maintains an inventory of units (such as propellers, hubs, assemblies and related hardware) which are modular in nature and readily installed in aircraft for which they are designed;

(ii) When mechanical failure requires repair the entire module in which the faulty component is located is removed and sent to the repair facility;

(iii) The latter removes an identical module from its inventory and forthwith transmits it to the airline for immediate reinstallation in the aircraft in exchange for the defective unit;

(iv) The defective unit is then repaired and returned to inventory. The cost of repair is billed to the airline.

This exchange procedure was followed by HOLIDAY and PROPELLER in connection with Regulator R-248. There is no evidence that HOLIDAY or PROPELLER agreed or intended to prejudice or alter the rights of either by expediting the return to HOLIDAY of an operative regulator. Had PROPELLER not followed the industry practice described above, it would have received, repaired and shipped the Regulator R-248 to HOLIDAY subject to its artisan's lien. No evidence was ever received that the agreement of HOLIDAY and PACIFIC to exchange the repaired unit for R-248 was intended to eliminate PROPELLER's lien rights on the exchanged unit. To construe the exchange procedure, based on industry custom and usage to accommodate the airline, as depriving the artisan of lien rights

granted under state law would apply a most inequitable construction to the transaction.

The Trustee cites no authority in support of his position.

IV. *Interest and Attorneys' Fees.*

The evidence is uncontradicated that PROPELLER invoiced HOLIDAY as follows:

Invoice No.	Date Payment Due	Amount
7257	8/22/74	$10,172.75
7379	9/21/74	5,880.00
7603	11/30/74	5,206.83

PROPELLER asks for interest on the principal sum from the due date until the date of payment. It also seeks attorneys' fees.

Interest.

Washington law (R.C.W. 60.08.010 and 60.08.050) fixes the rate of interest on PROPELLER's claim at six per cent per annum. PROPELLER asserts that it is a secured creditor, and as such is entitled to interest until the date of payment.

However, there is a distinction between the position of PROPELLER in this case and that of a creditor with an interest-bearing promissory note secured by a chattel mortgage, deed of trust or other security agreement. In the latter case, th debtor has agreed to pay interest, and has also agreed that the collateral secures the payment of interest. In the case at bar there is no such agreement. While the statutory provision for interest is adequate justification for prebankruptcy interest, it is difficult to equate PROPELLER'S claim for postbankruptcy interest to the fact situation in which such interest is allowed on foreclosure to the consensually secured creditor referred to above.

Accordingly, PROPELLER is awarded interest on the principal sum of each invoice from the due date to the date of the institution of the bankruptcy proceeding.

Attorneys' Fees.

Under Washington law a court is granted discretion to allow costs and a reasonable attorney's fee to a successful lien claimant (R.C.W. 60.08.050). On this authority, PROPELLER asserts a right to attorneys' fees.

Whether or not the Washington statute would justify the awarding of attorneys' fees in a bankruptcy court, no such award is warranted in the case at bar. The unique and complex questions of law involved in a determination of PROPELLER's rights in this case would not justify imposing its attorneys' fees on the general creditors in these bankruptcy proceedings.

This Memorandum Opinion shall constitute Findings of Fact and Conclusions of Law, as provided in R. 752(a). Counsel for PROPELLER is directed to prepare and lodge an order consistent with the foregoing.

Dated: August 19, 1976.

Robert L. Ordin,
Bankruptcy Judge.

APPENDIX B.

OPINION.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA.

In Re HOLIDAY AIRLINES CORPORATION, a California corporation (formerly doing business as HOLIDAY RECREATIONAL RESOURCES and HOLIDAY RESOURCES CORP.), Bankrupt.

CURTIS B. DANNING, as Trustee in Bankruptcy of Holiday Airlines Corporation, Appellant, vs. PACIFIC PROPELLER, INC., a Washington corporation, Appellee. No. BK-75-2237-LTL.

Filed: May 13, 1977.

This matter is before the Court on the appeal of the trustee of Holiday Airlines Corporation. The Bankruptcy Court held that the proceeds from the sale of a Holiday Airlines airplane were subject to a lien by Pacific Propeller, Inc. Jurisdiction to entertain this appeal rests on 11 U.S.C. §67(c). We affirm.

Prior to bankruptcy, Holiday Airlines was a California corporation and an intrastate air carrier within California. Pacific Propeller, which overhauls and repairs propellers and propeller accessories for commercial aircraft, operates its business in the State of Washington. In the summer of 1974, Pacific Propeller repaired certain propeller parts for an aircraft belonging to Holiday Airlines. The parts were re-attached to the aircraft when repairs were completed and Pacific Propeller filed with the Federal Aviation Authority in Oklahoma City a claim of lien upon the aircraft. The bill for the repairs was never paid.

Subsequently, Holiday Airlines was adjudicated a bankrupt. The trustee sold the airplane pursuant to a stipulation

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that any rights of Pacific Propeller transferred to the proceeds of the sale, and the Bankruptcy Court thereafter held after hearing that Pacific Propeller had a valid lien for its services. It is this ruling which the trustee appeals.

The Bankruptcy Judge reached his conclusion by applying Washington law, which authorizes an artisan's lien independent of possession of the good, rather than California law, which requires possession for a lien to remain valid. Neither the Bankruptcy Act, 11 U.S.C §§ 1 *et seq.* nor the Federal Aviation Act, 49 U.S.C. §§1301 *et seq.*, explicitly creates any federal rule for determining whether the lien is valid, and neither explicitly provides which state law should be applied.

Case authority is sparse. Only three Ninth Circuit cases have been cited to us, and none of those is directly on point. *In re Knox-Powell-Stockton Co.*, 100 F.2d 979, 982 (9th Cir. 1939) is cited for the proposition that the laws of the state where the adjudication took place govern the nature and extent of a lien. *Victor Gruen Associates Inc. v. Glass*, 338 F.2d 826, 829 (9th Cir. 1964) is cited for the proposition that the law of the state where the property is situated governs the nature and extent of a lien. *Colonial Trust Co. v. Groggin*, 230 F.2d 634 (9th Cir. 1955) is cited for the proposition that, where an article is in possession of one who has worked on it, the law of the place of possession governs the nature and extent of the lien.

Colonial Trust offers no help because it does not indicate which law to apply when the property is not in the possession of the person who worked on it. *In re Knox-Powell-Stockton* and *Victor Gruen Associates* also did not directly teach which state law should apply when the laws of two states conflict, but rather suggest that state law rather than federal law should govern when the validity of a lien is at issue. As such, the statements in *Knox-Powell-Stockton* and *Victor*

Gruen reflect the general view that the Bankruptcy Act incorporates state law to determine the extent and validity of a lien.

In the absence of a federal statute dictating which law to apply, incorporating state law requires that we first incorporate the conflicts law of the state in which we sit. *Compare Klaxon Company v. Stentor Electric Manufacturing Co., Inc.*, 313 U.S. 487 (1941) (incorporation of conflicts law in diversity cases). Thus, we must determine how California would resolve what purports to be a conflict between its lien laws and those of Washington. The Bankruptcy Court concluded that the theory of the RESTATEMENT (SECOND) OF CONFLICTS OF LAWS should govern. That theory requires the Court to consider the law of the state which has the most significant relationship to the parties and the good in question. Under RESTATEMENT §251, the location of the good when the security interest attaches is normally the critical factor in determining which state's law to apply. Therefore, the Bankruptcy Court applied Washington law.

California courts, however, follow a methodology of conflicts law known as the governmental interest approach. *See Bernhard v. Harrah's Club*, 16 Cal.3d 313, 546 P.2d 719, 128 Cal.Rptr. 215 (1976); *Reich v. Purcell*, 67 Cal.2d 551, 432 P.2d 727, 63 Cal.Rptr. 31 (1967). Under this approach, when two states have an interest in having their laws applied, the Court determines which state's interest would be impaired the least if its law were not applied. The Court then applies the law of the other state. *See Bernhard, supra.*

The true governmental interest approach comes into play, however, only when the laws of two states actually conflict. Thus, even though the laws at first glance may appear to conflict, the discrepancy may present a false conflict which does not require a court to consider the laws of two states.

Bernhard, supra, 16 Cal.3d at 318-319; *Hurtado v. Superior Court,* 11 Cal.3d 574, 522 P.2d 666, 114 Cal.Rptr. 106 (1974).

The parties and the Court below have not chosen to analyze the interests of Washington and California in enforcing their respective lien statutes. We may assume, however, that Washington's interest is in protecting those who repair, because goods may be returned and a lien preserved without awaiting payment. The California possessory lien statutes, on the other hand, protect purchasers, who safely may assume that the property they buy is unencumbered.

Here, it is the trustee and not a purchaser who seeks to have California's law enforced. The trustee knew of the claim of lien when he sought to dispose of Holiday Airlines' assets, as evidenced by the parties' having stipulated that any rights would transfer to the proceeds of the sale. If the trustee had not known of the claim of lien, Pacific Propeller might have a claim actionable against the purchaser, and it then would be necessary to consider the interests of Washington and California to determine which interest would be least impaired by the application of the other state's law. As it is, however, we need only note that on these facts California has no interest in having its law applied. Given this false conflict, we conclude that Washington law applies.

This is not to say that the stipulation of the parties dictates the application of Washington law and that in the absence of such a stipulation California law would apply. It is to say, however, that the knowledge of the trustee of the claim of lien and the absence of any purchaser who was hurt by the sale of the aircraft obviate the need for this Court to choose between Washington and California law. California's interest lies in protecting the purchaser, not the owner of the good, and when that interest is not present California's law should not be applied.

We agree therefore that Washington law governs the nature and extent of the lien. But the trustee also asserts that the lien must be recorded in Washington rather than with the F.A.A. in Oklahoma, and that, even if it could be recorded with the F.A.A., the description of the property to which the lien attached was inadequate. The Bankruptcy Court ruled that the F.A.A. recording provisions preempted those of the State of Washington, that this lien could be recorded under the Federal Aviation Act, and that the property was sufficiently described when the claim of lien was recorded. We agree with the conclusions of the Bankruptcy Judge in this regard, and adopt them as our own.

For the foregoing reasons, the judgment of the Bankruptcy Court is affirmed.

DATED: May 9, 1977.

Lawrence T. Lydick,
United States District Judge.

APPENDIX C

Opinion.

In the United States Court of Appeals for the Ninth Circuit.

In re HOLIDAY AIRLINES CORPORATION, a California corporation (formerly doing business as HOLIDAY RECREATIONAL RESOURCES and HOLIDAY RESOURCES CORP., Bankrupt.

CURTIS B. DANNING, as Trustee in Bankruptcy of Holiday Airlines Corporation, Appellant, v. PACIFIC PROPELLER, INC., a Washington corporation, Appellee.

No. 77-2400.

Filed: May 28, 1980.

Appeal from the United States District Court for the Central District of California.

BEFORE: Chambers, and Ely, Circuit Judges, and Copple*, District Judge.

In January 1975, appellee Pacific Propeller, Inc., (a Washington corporation operating in Washington) shipped to California a propeller assembly that it had overhauled for Holiday Airlines (a California corporation operating in California). Simultaneously, it billed Holiday $21,259.58 for the work that had been done and, relying on the Washington artisans' lien statute (RCW 60.08.010),[1] filed a "Notice of

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*The Honorable William P. Copple, United States District Judge for the District of Arizona, sitting by designation.

[1]RCW 60.08.010 does not require the lienholder to retain possession:

"Every person, firm or corporation who shall have performed labor or furnished material in the construction or repair of any chattel at the request of its owner, shall have a lien upon such chattel for such labor performed or material furnished, notwithstanding the fact that such chattel be surrendered to the owner, thereof: *Provided, however,* That no such lien shall continue, after the delivery of such chattel to its owner, as against the rights of third persons who, prior to the filing of the lien notice as hereinafter provided for, may have acquired the title to such chattel in good faith, for value and without actual notice of the lien."

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Claim of Lien — Aircraft'' with the Federal Aviation Administration at its central recording office at Oklahoma City.

A month later Holiday commenced Chapter XI proceedings in the Central District of California and it was thereafter adjudicated bankrupt. The trustee brought an action to determine the validity of several liens. Pacific Propeller counterclaimed asserting the validity of its lien against the aircraft in which the propeller had been reinstalled.[2]

The bankruptcy judge and the district judge both concluded (though they got there by different routes) that the lien attached in Washington, that Washington's nonpossessory lien law applied, and that the lien was valid under Washington law and the notice properly recorded so as to entitle it to priority under the Federal Aviation Act. The trustee argues that the aircraft was present in California at the time the bankruptcy proceedings were commenced and that the applicable lien law is that of the forum State, i.e. California. As the pertinent California statute (California Code of Civil Procedure, § 1208.61) conditions the lien on retained possession, the Trustee takes the position that the lien is invalid.

The lien was filed under terms of the Federal Aviation Act. The pertinent provisions of 49 U.S.C. § 1403a state:

> ''(a) The Secretary of Transportation shall establish and maintain a system for the recording of each and all of the following:
>
> (1) Any conveyance which affects the title to, or any interest in, any civil aircraft of the United States;

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[2]The propeller assembly had been reinstalled in the Lockheed Electra aircraft from which it had been removed for repair. The trustee sold the aircraft under a stipulation of the parties that the proceeds would be impounded subject to the determination of the rights of the various lien claimants.

(2) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, lease or other instrument affects the title to, any interest in [certain engines and propellers]; and

(3) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any aircraft engines, propellers, or appliances maintained by or on behalf of an air carrier. . . ."

The provisions of the Federal Aviation Act preempt State law insofar as they relate to the priority of liens. *State Securities Co. v. Aviation Enterprises, Inc.*, 355 F.2d 225 (10th Cir. 1966); *Pope v. National Aero Finance Co., Inc.*, 236 Cal.App.2d 722, 46 C.R. 233 (1965). But matters touching on the validity of liens are determined by underlying State law. See 49 U.S.C. 1406; *State Securities Co. v. Aviation Enterprises, Inc., supra; Texas National Bank of Houston v. Aufderheide*, 235 F.Supp. 599 (E.D. Ark. 1964); *Aircraft Investment Corp. v. Pezzani & Reid Equipment Co.*, 205 F. Supp. 80 (E.D. Mich. 1962). We thus begin with an acknowledgment that State lien law applies. The issue is which State's lien law? And to determine of that issue, we must first decide what choice of law rationale is to be employed.

The district judge, following the general rule in diversity of citizenship cases (*Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487 (1941)) looked to the forum State's choice of law rules in order to determine which State lien law should be applied. He concluded that under California's "governmental interest" approach, as defined in *Bernhard v. Harrah's Club*, 16 Cal.3d 313, 128 C.R. 215, 546 P.2d 719 (1976) and *Reich v. Purcell*, 67 Cal.2d 551, 63 C.R. 31, 432 P.2d 727 (1967), Washington's and not California's interest would be more impaired if its lien law were not

applied. He then concluded that the lien was valid under Washington's non-possessory lien statute.

The bankruptcy judge had looked to the Restatement (Second) of Conflicts for its choice of law rule as to chattel liens. Section 251 of that Restatement focuses the inquiry on which State's law bears the more "significant relationship to the parties, the chattel and the security interest."[3] Applying this test, he also concluded that Washington lien law should be employed. In applying the Restatement's test, rather than the conflicts law of California, the bankruptcy judge had the blessing of several commentators, including Collier, who urges that bankruptcy courts should not be required to use the conflicts rule in diversity of citizenship cases but "should be free to exercise for itself the choice of applicable state law." 4B Collier, on Bankruptcy (14th Ed. 1976), ¶ 70.49 at 605-606.

We agree with the bankruptcy judge that the rule in diversity of citizenship cases, i.e. of mechanical application of the conflicts law of the forum State, should not be required in bankruptcy proceedings, at least in Federal Aviation Act cases. The Bankruptcy Act is silent as to the appropriate choice of law when two States have competing interests. Aircraft and their appurtenances, which are subject to the Act, are mobile by nature. It is their very mobility that led to the enactment of the federal recording provisions, so that creditors and others would have one central location

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[3]Section 251 of the Restatement (Second) of Conflicts (1971) states:
"(1) The validity and effect of a security interest in a chattel as between the immediate parties are determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the parties, the chattel and the security interest under the principles states in § 6.
(2 In the absence of an effective choice of law by the parties, greater weight will usually be given to the location of the chattel at the time that the security interest attached than to any other contact in determining the state of the applicable law."

to refer to when they wished to search titles and other ownership interests. Otherwise, it would be necessary to search what might well be a multitude of State and County recording offices to find the information. The place where such mobile aircraft property *happens* to be at the time bankruptcy is commenced, should not be seen as controlling when choice of law issues are presented.

The Act itself addresses the choice of law problem in an amendment, enacted in 1964. Section 1406 of Title 49 states:

> "The validity of an instrument the recording of which is provided for by section 1403 of this title shall be governed by the laws of the State, District of Columbia, or territory or possession of the United States in which such instrument is delivered, irrespective of the location or the place of delivery of the property which is the subject of such instrument. Where the place of intended delivery of such instrument is specified therein, it shall constitute presumptive evidence that such instrument was delivered at the place so specified."

Sanders v. M.D. Aircraft Sales, Inc., 575 F.2d 1086 (3d Cir. 1978), considers choice of law issues in the context of a consensual finance company loan. The Third Circuit refers to the legislative history of Section 1406, and its recognition that the Federal Aviation Act as adopted in 1958 had "left unresolved serious choice of law questions with respect to liens on chattels so mobile as aircraft." 575 F.2d at 1088. It then quotes from the legislative history of Section 1406 as contained in Senate Report 1060, 88th Cong., 2nd Sess., reprinted in U.S. Code & Admin. News, pp. 2319-2320 (1964):

> "The rule would apply to all instruments subject to the recording provisions of § 503 of the Federal Aviation Act. Included would be various instruments exe-

> cuted for security purposes such as conveyances, leases, mortgages, equipment trusts, conditional sales contracts, etc. Assignments, amendments, and supplements to such instruments would similarly be covered. To determine the validity of such an instrument, one need only to look to the substantive law of the particular State in which the instrument was delivered."

In determining that the law of the State where the "instrument was delivered" is to apply, the Congress specifically rejected two alternative suggestions, i.e. that the jurisdiction where the property is located, or where the parties reside, be considered the jurisdiction whose law will be applied to resolve the conflicts question. In the view of the Senate Report, both alternatives would have resulted in "needless complexities and difficulties". More particularly, if the jurisdiction where the property was located were chosen, "it would be necessary to know the exact location of every aircraft at the precise moment the refinancing instrument was executed." *Sanders* views Section 1406 as a preemption by federal law and concludes that accordingly Congress "has sensibly federalized choice of law, thereby freeing aircraft financing from the forum shopping which the rule of *Klaxon Co. v. Stentor Electric Mfg. Co.* . . . might otherwise produce." 575 F.2d at 1088.

In the words of the Senate Report, the adoption of Section 1406 "establishes a uniform Federal rule governing the validity of instruments affecting title to or interests in aircraft and related equipment" and the provisions of the Section "would apply to all instruments subject to the recording provisions of Section 503 of the Federal Aviation Act [49 U.S.C. §1403]."

We cannot accept an argument that artisans' liens are not within the ambit of the Act. Section 1403 refers to any "instrument executed for security purposes" and to any

"other instrument [that] affects the title to, or any interest in, any aircraft engines, propellers, or appliances. . . ." Rules promulgated in 14 C.F.R. 49.41 and 19.51, refer to "Any lease, a notice of tax lien, or other lien. . . ." *See also International Atlas Services, Inc. v. Twentieth Century Aircraft Co.*, 251 Cal.App.2d 434, 59 C.R. 495 (1967), *cert. denied*, 389 U.S. 1038 (1968); *Smith v. Eastern Automotive Corp.*, 99 N.J. Super. 340, 240 A.2d 17 (1968); *Crescent City Aviation Inc. v. Beverly Bank*, 139 Ind.App. 669, 219 N.E.2d 446 (1966).

It is not clear how liens that arise by operation of law, and not by the agreement of the parties (and thus without an "instrument" that is "delivered"), fit within the scope of Section 1406, if indeed they fit at all. The artisan's lien in this case was filed on an F.A.A. form used for the purpose and was not "delivered" by one party to another party, but was completed by the lienholder and filed with the F.A.A.

We conclude that it is entirely consistent with the spirit of Section 1406 that the validity of this non-consensual lien be tested by the law of the State in which the lien attached. The lien is a product of the operation of that State's law. The reasoning behind Section 1406, as explained by its legislative history, is that the place where aircraft or their appurtenances happen to be when bankruptcy is undertaken, is very largely irrelevant.[4]

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[4]We are not impressed by the authority cited by appellant for its argument that the law to be applied in this Federal Aviation Act case is the law of the State where the aircraft or its appurtenances happened to be when the bankruptcy proceedings were begun. When read carefully, the cases cited by appellant stand merely for the proposition that State law and not federal common law determines the validity of liens in bankruptcy cases. See e.g. *Victor Gruen Associates, Inc. v. Glass*, 338 F.2d 826, 839 (9th Cir. 1964); *In re Knox-Powell-Stockton Co.*, 100 F.2d 979, 982 (9th Cir. 1939).

The bankruptcy judge's reasoning is significantly in accord with our conclusion. He held that the lien law of Washington should apply after analyzing the facts in the light of Section 251 of the Restatement (Second) of Conflicts, i.e. its "significant relationship" test. He held that Washington lien law bore the more significant relationship to the parties, the chattel and the security interest, after noting that the airline delivered the propeller assembly to Washington, for work to be done in Washington, by a Washington corporation, with Washington employees, and with payment for the work to be made in Washington. This reasoning when reduced to its essentials implements our conclusion that as Washington was the State whose law gave rise to the lien, and was the State where the lien attached, then Washington's lien law would most properly be applied to test the validity of the lien. We find his reasoning supportive of, and consistent with, the conclusions we draw of the general statutory intent expressed by Section 1406. We thus conclude that Washington lien law applies and, under that law, the lien was entirely valid.

The other issues require little discussion. The trustee argues that even if Washington lien law applied (and we hold here that it did apply), the propeller company did not comply with procedural requirements and that the lien was therefore unenforceable. We disagree. The lien was filed with the F.A.A. at its facility in Oklahoma City, which is the appropriate place for it to have been filed under the federal rules. This federal recording statute, and rules implementing it, clearly preempt the filing requirements of Washington law. *McCormack v. Air Center, Inc.*, (Okla.) 571 P.2d 835 (1977). The predominant purpose of the statute was to provide one central place for the filing of such liens and thus eliminate the need, given the highly mobile nature

of aircraft and their appurtenances, for the examination of State and County records.

Finally, the appellant contends that the lien in this case could not properly attach to the entire aircraft but only to the propeller assembly. We find no such rule under Washington law. *See generally Seaboard Securities Co. v. Berg*, 177 Wash. 203, 31 P.2d 503 (1934). Nor do we find anything in the Federal Aviation Act suggesting that an artisan's protection should be restricted because his notice describing the lien refers to the entire aircraft.

AFFIRMED.

APPENDIX D.

Order Denying Petition for Rehearing.

United States Court of Appeals for the Ninth Circuit.

In re Holiday Airlines Corporation, a California corporation (formerly doing business as Holiday Recreational Resources and Holiday Resources Corp.), Bankrupt.

Curtis B. Danning, as Trustee in Bankruptcy of Holiday Airlines Corporation, Appellant, v. Pacific Propeller, Inc., a Washington corporation, Appellee. No. 77-2400.

Filed: June 24, 1980.

Before: Chambers and Ely, Circuit Judges, and Copple, District Judge.

The petition for rehearing is denied.

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APPENDIX E.

Order on Motion for Stay of Mandate. (Rule 41(b) Fed.R.App.P.).

United States Court of Appeals for the Ninth Circuit.

In re: Holiday Airlines Corporation, a California corporation (formerly doing business as Holiday Recreational Resources and Holiday Resources Corp.), Bankrupt.

Curtis B. Danning, as Trustee in Bankruptcy of Holiday Airlines Corporation, Appellant, vs. Pacific Propeller, Inc., a Washington corporation, Appellee. No. 77-2400.

Filed: June 29, 1980.

Upon due consideration of appellant motion for stay of the mandate of this Court in the above cause pending the filing, consideration and disposition by the Supreme Court of the United States of a petition for writ of certiorari, such petition to be filed in the Clerk's Office of the Supreme Court of the United States on or before July 30, 1980.

IT IS ORDERED that the motion for stay of mandate be, and the same is hereby granted.*

Chambers,
United States Circuit Judge.

CA9-003 (12/3/79).

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*In the event that the motion for stay of mandate and the petition for writ of certiorari are granted, then this stay will continue pending the final disposition of the case by the Supreme Court of the United States.

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APPENDIX F.

49 U.S.C. 1301(6), (12), (20), (33) and (37).

§ 1301. Definitions

As used in this chapter, unless the context otherwise requires—

* * *

(6) ''Aircraft engine'' means an engine used, or intended to be used, for propulsion of aircraft and includes all parts, appurtenances, and accessories thereof other than propellers.

* * *

(12) ''Appliances'' means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.

* * *

(20) ''Conveyance'' means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.

* * *

(33) ''Propeller'' includes all parts, appurtenances, and accessories thereof.

* * *

(37) ''Spare parts'' means parts, appurtenances, and accessories of aircraft (other than aircraft engines and propellers), of aircraft engines (other than propellers), of propellers and of appliances, maintained for installation or use

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in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto.

49 U.S.C. § 1403(a) and (f).

§ 1403. Recordation of aircraft ownership

(a) The Secretary of Transportation shall establish and maintain a system for the recording of each and all of the following:

(1) Any conveyance which affects the title to, or any interest in, any civil aircraft of the United States;

(2) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any specifically identified aircraft engine or engines of seven hundred and fifty or more rated takeoff horsepower for each such engine or the equivalent of such horsepower, or any specifically identified aircraft propeller capable of absorbing seven hundred and fifty or more rated takeoff shaft horsepower, and also any assignment or amendment thereof or supplement thereto;

(3) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any aircraft engines, propellers, or appliances maintained by or on behalf of an air carrier certificated under section 1424(b) of this title for installation or use in aircraft, aircraft engines, or propellers, or any spare parts maintained by or on behalf of such an air carrier, which instrument need only describe generally by types the engines, propellers, appliances, and spare parts covered thereby and designate the location or locations thereof; and also any assignment or amendment thereof or supplement thereto.

* * *

(f) The Secretary of Transportation shall keep a record of the time and date of the filing of conveyances and other instruments with him and of the time and date of recordation thereof. He shall record conveyances and other instruments filed with him in the order of their reception, in files to be kept for that purpose, and indexed according to—

(1) the identifying description of the aircraft, aircraft engine, or propeller, or in the case of an instrument referred to in subsection (a)(3) of this section, the location or locations specified therein, and

(2) the names of the parties to the conveyance or other instrument.

14 C.F.R. §§ 49.41 and 49.43.

Subpart D—Encumbrances Against Specifically Identified Aircraft Engines and Propellers.

§ 49.41 Applicability.

This subpart applies to the recording of the following kinds of conveyances:

(a) Any lease, a notice of tax lien or other lien (except a notice of Federal tax lien referred to in § 49.17(a)), and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which affects title to, or any interest in, any specifically identified aircraft propeller capable of absorbing 750 or more rated takeoff shaft horsepower.

(b) An assignment or amendment of, or supplement to, an instrument named in paragraph (a) of this section.

(c) A release, cancellation, discharge, or satisfaction of a conveyance named in paragraph (a) or (b) of this section.

§ 49.43 Eligibility for recording: general requirements.

A conveyance is eligible for recording under this subpart only if, in addition to the requirements of §§ 49.11, 49.13, and 49.17, the following requirements are met:

(a) It affects and describes an aircraft engine or propeller to which this subpart applies, specifically identified by make, model, horsepower, and manufacturer's serial number; and

(b) It is accompanied by the recording fee required by § 49.15, but there is no fee for recording a conveyance named in § 49.41(c).

14 C.F.R. §§ 49.51 and 49.53.

Subpart E—Encumbrances Against Air Carrier Aircraft Engines, Propellers, Appliances, and Spare Parts.

§ 49.51 Applicability.

This subpart applies to the recording of the following kinds of conveyances:

(a) Any lease, a notice of tax lien or other lien (except a notice of Federal tax lien referred to in § 49.17(a), and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which affects title to, or any interest in, any aircraft engine, propeller, or appliance maintained by or on behalf of an air carrier certificated under section 604(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1424(b)) for installation or use in aircraft, aircraft engines, or propellers, or any spare parts, maintained at a designated location or locations by or on behalf of such an air carrier.

(b) An assignment or amendment of, or supplement to, an instrument named in prargraph (a) of this section.

(c) A release, cancellation, discharge, or satisfaction of a conveyance named in paragraph (a) or (b) of this section.

§ 49.53 Eligibility for recording: general requirements.

(a) A conveyance is eligible for recording under this subpart only if, in addition to the requirements of §§ 49.11, 49.13, and 49.17, the following requirements are met:

(1) It affects any aircraft engine, propeller, appliance, or spare part, maintained by or on behalf of an air carrier certificated under section 604(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1424(b));

(2) It contains or is accompanied by a statement by the air carrier certificated under that section;

(3) It specifically describes the location or locations of each aircraft engine, propeller, appliance, or spare part covered by it; and

(4) It is accompanied by the recording fee required by § 49.15, but there is no fee for recording a conveyance named in § 49.51(c).

(b) The conveyance need only describe generally, by type, the engines, propellers, appliances, or spare parts covered by it.

R.C.W. §§ 60.08.010 and 60.08.020.

60.08.010 *Lien authorized.* Every person, firm or corporation who shall have performed labor or furnished material in the construction or repair of any chattel at the request of its owner, shall have a lien upon such chattel for such labor performed or material furnished, notwithstanding the fact that such chattel be surrendered to the owner thereof: *Provided, however,* That no such lien shall continue, after the delivery of such chattel to its owner, as against the rights of third persons who, prior to the filing of the lien notice as hereinafter provided for, may have acquired the title to such chattel in good faith, for value and without actual notice of the lien.

60.08.020 *Notice of lien — Contents — Form.* In order to make such lien effectual the lien claimant shall, within sixty days from the date of delivery of such chattel to the owner, file in the office of the auditor of the county in which such chattel is kept, a lien notice, which notice shall state

the name of the claimant, the name of the owner, a description of the chattel upon which the claimant has performed labor or furnished material, the amount for which a lien is claimed and the date upon which such expenditure of labor or material was completed, which notice shall be signed by the claimant or someone on his behalf. . . .

APPENDIX G.

Notice of Claim of Lien—Aircraft.

TO Department of Transportation
Federal Aviation Administration
Aeronautical Center
P. O. Box 25082
Oklahoma City, Oklahoma 73125

DESCRIPTION OF AIRCRAFT:

Aircraft Make and Model
Lockheed L 188A

FAA Registration Number	Aircraft Serial Number
971 HA	1091
Engine Make and Model	Engine Serial Number
Propeller Make	Propeller Serial Number(s)

Spare Parts and Location
2587 Vivian St., Lakewood, Colorado

PLEASE TAKE NOTICE that the undersigned corporation, pursuant to the laws of the State of Washington and other applicable law, does hereby have a claim of lien on the aforesaid aircraft, the reputed owner of which is Petroleum Investment Services Inc.
2587 Vivian St., Lakewood, Colorado
[Address]

The undersigned corporation commenced to perform labor and other services and furnish materials to said aircraft for repair and overhaul component parts

on July 5, 1974, and completed performance of said labor and services and the furnishing of said materials on January 10, 1975. The reasonable value of said labor, services and materials is $36,778.13, exclusive of reasonable attorneys fees and interest.

Dated this 14th day of January, 1975.

Pacific Propeller Inc.,
By Henry A. Roche,
Vice President and General Manager.

[continued on reverse]

STATE OF WASHINGTON
ss.
COUNTY OF KING

On this 14 day of January, 1975, personally appeared before me Henry A. Roche, to me known to be the Vice President of the corporation that executed the within and foregoing Notice of Claim of Lien—Aircraft, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of,
Washington, residing at Kent.